

FEDERAL COURT

BETWEEN:

Joseph **HICKEY**

APPLICANT

And

ATTORNEY GENERAL OF CANADA

RESPONDENT



NOTICE OF APPLICATION
(Sections 18 and 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The Applicant requests that this application be heard **in English, by teleconference**, or by any other manner that the Court chooses.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [*Federal Courts Rules*](#) and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: 28-MAY-2025

Issued by: Original signed by Jessica Lorch, Registry Officer

Address of local office: 90 Sparks Street
Ottawa, ON K1A 0H9

TO:

ATTORNEY GENERAL OF CANADA

(To be served by the Court Registry, pursuant to Rule 133 of the Federal Court Rules)

and

Social Security Tribunal – Appeal Division

by email : info.sst-tss@canada.gc.ca, as requested on the SST website.

Application

This is an application for judicial review in respect of a decision of the Appeal Division of the Social Security Tribunal (herein after the Tribunal), rendered on May 7, 2025 by member Janet Lew, in which the latter refused the Applicant the right to appeal to the Appeal Division. The Tribunal case number is: AD-24-13. The Applicant received the decision by email on May 7, 2025.

The Applicant makes application to this Court for an order to:

- **QUASH OR SET ASIDE** the Tribunal's decision;
- **REFER BACK** the matter to a new member of the Appeal Division of the Tribunal for a new determination;
- **ORDER** any directions that the Court considers to be appropriate.

The grounds for the application are:

The Tribunal was bound to apply subsections 58(1) and (2) of the *Department of Employment and Social Development Act* (S.C. 2005, c. 34). It refused to exercise its jurisdiction properly.

It failed to observe principals of natural justice, procedural fairness and/or other procedures that it was required to observe by law.

It erred in law in making its decision, whether or not the error appears on the face of the record.

It based its decision on erroneous findings of fact that it made in a perverse or capricious manner, or without considering the material before it.

It acted in any other way that was contrary to law.

More precisely, but not limited to what is mentioned hereunder:

- I am an interdisciplinary scientist with a PhD in Physics (Complexity Science) having recently published two scientific papers in recognized peer-reviewed journals in the area of epidemiology, including vaccines.¹ In 2021, I was employed as a Data Scientist

¹ J. Hickey, D.G. Rancourt. Predictions from standard epidemiological models of consequences of segregating and isolating vulnerable people into care facilities. *PLOS One*. 2023;18:e0293556. <https://doi.org/10.1371/journal.pone.0293556>; J. Hickey, D.G. Rancourt. Viral respiratory epidemic

at the Bank of Canada. On November 19, 2021, my employer suspended me without pay for refusing to receive injections of a COVID vaccine.

- The Tribunal's General Division decided that my refusal to be injected constituted "misconduct" justifying denial of employment insurance (EI) benefits, pursuant to the *Employment Insurance Act* (the "EI Act").
- I was or would have been working from home during the entire period relevant to my EI claim.²
- I entered extensive documentary evidence by affidavit before the Tribunal's General Division (many published scientific papers and reports, and such) that the COVID vaccines can cause permanent disability and death, especially myocarditis in males in my age group.³

modeling of societal segregation based on vaccination status. *Cureus*. 2023;15:e50520.
<https://doi.org/10.7759/cureus.50520>.

² Affidavit of Joseph Hickey of July 14, 2022, at pages GD2-65 to GD2-72 in the Tribunal's file GE-22-2365.

³ Affidavit of Joseph Hickey of July 14, 2022, at pages GD2-65 to GD2-896 in the Tribunal's file GE-22-2365. Extensive scientific evidence of harms from COVID vaccines is documented in the said July 14, 2022 Affidavit at: Sections 2e and 3d of Exhibit A (pages GD2-88 to GD2-157 and GD2-166 to GD2-173) and Exhibit F (pages GD2-860 to GD2-877). In particular:

- A plethora of dangerous adverse events, including death, have been associated with the COVID-19 vaccines in the scientific literature. For example, see: "Over 1000 peer-reviewed articles showing evidence of harm from COVID-19 vaccine products" at Section 2e (vi) of Exhibit A of the Affidavit (pages GD2-112 to GD2-150 in SST file GE-22-2365).
- The COVID-19 vaccines have been scientifically proven in autopsy studies to have caused death. See Section 2e (iv) of Exhibit A of the Affidavit (pages GD2-101 to GD2-104 in SST file GE-22-2365).
- Significant risk of potentially fatal heart inflammation (myocarditis or pericarditis) following COVID-19 vaccination for males under age 40 has been demonstrated in many countries and jurisdictions, including in publications in the highest-level peer-reviewed academic journals. For example, the reference by M. Oster et al. "Myocarditis Cases Reported After mRNA-Based COVID-19 Vaccination in the US From December 2020 to August 2021", *Journal of the American Medical Association* 327 (2022) 331-340, <https://doi.org/10.1001/jama.2021.24110>, cited at pages GD2-109, GD2-150, GD2-151 and GD2-168 in Exhibit A of the Affidavit (SST file GE-22-2365), which reports a rate of myocarditis 11.3 times higher than normal following the second dose of the Pfizer COVID-19 vaccine and 12.6 times higher than normal following the Moderna COVID-19 vaccine, for males aged 30-39. In this regard, I was personally in a high-risk category in November 2021, being male and under age 40, as affirmed at para. 19 of my Affidavit (page GD2-71 in SST file GE-22-2365).

- The crux of my argument before the Tribunal is:

Declining the medical intervention of injecting a substance into the body, which can cause long-term or permanent disability and death, is not “misconduct” justifying depriving me of government assistance, pursuant to the *EI Act*.

- My argument was essentially not heard, considered or addressed.
- Instead, the Tribunal’s Appeal Division side-stepped my argument by using an incorrect definition of (or test for) “misconduct” (a definition not following by necessity from the *EI Act*) that permits no consideration of the employer’s directive being refused.
- Specifically, the Appeal Division expressly took its definition of “misconduct” from the following paragraph of *Mishibinijima*:⁴

[T]here will be misconduct where the conduct of a claimant was wilful, i.e., in the sense that the acts which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

- The said definition of misconduct applied by the Appeal Division amounts to the equation “wilfully disobey demand = misconduct, irrespective of what is being demanded.” The definition applied by the Tribunal’s Appeal Division is a necessary condition but not a sufficient one. The said definition can lead to absurd results in many specific cases. For example, an employee who refuses an employer directive or mandatory policy to act causing serious injury to a person would be found to have committed misconduct under the said definition, contrary to the intended purpose of the *EI Act*.
- *Mishibinijima* is not a case in which the employer was demanding an act (showing up for work) that attracts illegality, harm or safety. The decision maker in *Mishibinijima* did not and did not need to consider whether the demand if obeyed violated

⁴ Appeal Division’s decision of May 7, 2025 in Tribunal file number AD-24-13 at para. 29, citing *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36, para. 14.

fundamental rights, safety or legality (it trivially does not, and this was not the issue). Therefore, the analysis in *Mishibinijima* is not relevant to the present case.

- In my case, I refused my employer's demand to me (structured as a policy imposed on all employees) that I be injected with a potentially lethal substance, often causing myocarditis in males in my age group. My refusal had no bearing on my ability to perform my work, because I and all my colleagues worked remotely.
- In addition to the above, the Tribunal's Appeal Division failed to hear and consider my separate argument that:

The Canadian Employment Insurance Commission's decision (the Government of Canada's decision) to deny me EI benefits by interpreting my refusal to be vaccinated as misconduct under the *EI Act*, in and of itself, constituted a violation of my constitutional rights, including the right to life, liberty and security of the person (s. 7 of the *Canadian Charter of Rights and Freedoms*) and freedom of conscience and religion (s. 2 of the *Charter*).

This application will be supported by the following material:

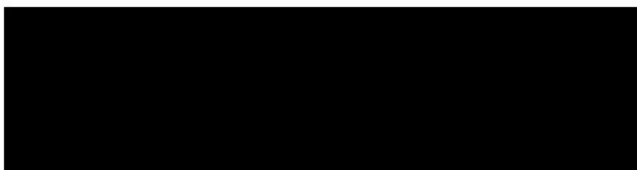
- A copy of the Tribunal Record.
- A copy of any other material that was considered or should have been considered by the Tribunal.

In this regard, the Applicant requests the Tribunal to send to the Applicant and the registry of the Court, a certified copy of the following documents:

- the Tribunal's Record, including the transcript of the hearing that was supposed to be part of the record that the Appeal Division Member had to consider in order to make its decision.

The Applicant requests that the case be heard in ENGLISH.

May 28, 2025



I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée À l'original déposé au dossier de la Cour fédérale.

Filing Date 28-MAY-2025
Date de dépôt :

Dated 29-MAY-2025
Fait le :

Jessica Lorch
Registry Officer